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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/926,788 09/10/97 LEWIS

R 1339.08.A

0M12/1130

EXAMINER

RODGERS & RODGERS  
880 NORTH ISLAND DRIVE  
ATLANTA, GA 30327

SRIVASTAVA, V

ART UNIT PAPER NUMBER

3761

13

DATE MAILED:

11/30/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No.	Applicant(s)
	08/926,788	LEWIS ET AL.
	Examiner	Art Unit
	Virendra K Srivastava	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

#### Status

1) Responsive to communication(s) filed on 11/18/19 .

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 2 - 7 and 10 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 2 - 7 and 10 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some \* c) None of the CERTIFIED copies of the priority documents have been:

1. received.

2. received in Application No. (Series Code / Serial Number) \_\_\_\_\_ .

3. received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

#### Attachment(s)

14) Notice of References Cited (PTO-892)                    17) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

15) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    18) Notice of Informal Patent Application (PTO-152)

16) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .                    19) Other: \_\_\_\_\_ .

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***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the shape of the enclosure as claimed must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect can be deferred until the application is allowed by the examiner.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2 – 7 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are:

In claim 2, the recitations, in lines 2 and 3, "said shell" and in line 4, "said back frame" have no antecedent basis.

Similarly, in claim 3, "said connector"; in claim 4, "said control component" and "said low air pressure alarm"; in claim 5, "said control components" and "said shell"; in

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claim 6, "said compartment"; and in claim 7, "said shell", "said compartment", "said control components", "said low air pressure alarm".

Applicant should check all the claims and correct.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Warncke et al (Pat. # 2,831,607).

Note Warncke et al teach a self contained breathing apparatus comprising an air tank (2), a closure plate (26) which forms an enclosure (H) with the rear wall and side walls.

Regarding shaping the walls to conform to the user's back and also to conform to the shape of the air tank supported on to the surface of a wall, note Warncke et al teach in column 2, lines 29 – 40, the concept of shaping the walls of the enclosure to conform to the shape of the user's back and also to conform to the shape of the equipment contained therein. However, Warncke et al do not specifically disclose that the wall of the enclosure is shaped to accommodate the air tank on the outside of the enclosure. It is noted that shaping the walls of the enclosure is conventional for compact design.

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Therefore, it would have been obvious to a person having an ordinary skill in this art to shape the enclosure of Warncke et al in order to ensure a compact enclosure and shaped to be comfortably supported on to the back of the user.

With respect to claims 2 – 7, note Warncke et al teach all the control components required for a self contained breathing apparatus, regarding the use of alarms, Warncke et al is silent but the provision of an alarm or other safety features are well known in this art and would have been obvious to one having an ordinary skill as an ordinary choice among well known mechanical expedients.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

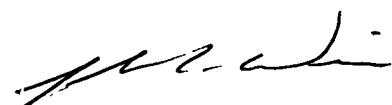
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Virendra K Srivastava whose telephone number is (703) 308-0959. The examiner can normally be reached on 8.30 AM to 6.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

vs. JK  
November 24, 1999

  
John G. Weiss  
Supervisory Patent Examiner  
CPE/PG-30